

transfer of an undivided present interest in property. For example, a contribution of an undivided one-quarter interest in a painting with respect to which the donee is entitled to possession during three months of each year shall be treated as made upon the receipt by the donee of a formally executed and acknowledged deed of gift. Section 170(f) and this subparagraph have no application in respect of a transfer of a future interest in intangible personal property or in real property. However, a fixture which is intended to be severed from real property shall be treated as tangible personal property. For example, a contribution of a future interest in a chandelier which is attached to a building is considered a contribution which consists of a future interest in tangible personal property if the transferor intends that it be detached from the building at or prior to the time when the charitable organization's right to possession or enjoyment of the chandelier is to commence. For purposes of section 170(f) and this subparagraph, the term *future interest* has generally the same meaning as it has when used in section 2503, relating to taxable gifts, see § 25.2503-3 of Part 25 of this chapter (Gift Tax Regulations), and such term includes reversions, remainders, and other interests or estates, whether vested or contingent, and whether or not supported by a particular interest or estate, which are limited to commence in use, possession or enjoyment at some future date or time. The term *future interest* includes situations in which a donor purports to give tangible personal property to a charitable organization, but has an understanding, arrangement, agreement, etc. (whether written or oral) with the charitable organization which has the effect of reserving to, or retaining in, such donor a right to the use, possession, or enjoyment of the property.

(ii) The provisions of subdivision (i) of this subparagraph may be illustrated by the following examples:

Example 1. On December 31, 1964, A, an individual who reports his income on the calendar year basis, conveys by deed of gift to a museum title to a painting, but reserves to himself the right to the use, possession, and enjoyment of the painting during his life-

time. At the time of the gift the value of the painting is \$90,000. Since the contribution consists of a future interest in tangible personal property in which the donor has retained an intervening interest, no contribution is considered as having been made in 1964.

Example 2. Assume the same facts as in *Example (1)* except that on December 31, 1965, A relinquishes all of his right to the use, possession, and enjoyment of the painting and delivers the painting to the museum. Assuming that the value of the painting has increased to \$95,000, A is treated as having made a charitable contribution of \$95,000 in 1965.

Example 3. Assume the same facts as *Example (1)* except A dies without relinquishing his right to the use, possession, and enjoyment of the painting. Since A did not relinquish his right to the use, possession, and enjoyment of the property during his life, A is treated as not having made a charitable contribution of the painting for income tax purposes.

Example 4. Assume the same facts as in *Example (1)* except A, on December 31, 1965, transfers his interest in the painting to his son, B. Since the relationship between A and B is one described in section 267(b), no contribution of the remainder interest in the painting is considered as having been made in 1965.

Example 5. Assume the same facts as in *Example (4)*. Also assume that on December 31, 1966, B conveys the interest measured by A's life to the museum. B has made a charitable contribution of the present interest in the painting conveyed to the museum (i.e., the life interest measured by A's life expectancy in 1966 valued according to paragraph (f), Table 1, of § 20.2031-7 of Part 20 of this chapter (Estate Tax Regulations)). In addition, since all intervening interests in, and rights to the actual possession or enjoyment of the property, have expired, a charitable contribution of the remainder interest is treated as having been made by A in 1966. Such remainder interest shall also be valued according to paragraph (f), Table 1, of § 20.2031-7 of Part 20 of this chapter (Estate Tax Regulations)).

(iii) Section 209(f)(3) of the Revenue Act of 1964 (78 Stat. 47) provides an exception to the rule set forth in section 170(f). Pursuant to the exception, section 170(f) and subdivision (i) of this subparagraph shall not apply in the case of a transfer of a future interest in tangible personal property made after December 31, 1963, and before July 1, 1964, where:

(a) The sole intervening interest or right is a nontransferable life interest reserved by the donor, or

(b) In the case of a joint gift by husband and wife, the sole intervening interest or right is a nontransferable life interest reserved by the donors which expires not later than the death of whichever of such donors dies later.

For purposes of the preceding sentence, the right to make a transfer of the reserved life interest to the donee of the future interest shall not be treated as making a life interest transferable.

(e) *Transfers subject to a condition or a power.* If as of the date of a gift a transfer for charitable purposes is dependent upon the performance of some act or the happening of a precedent event in order that it might become effective, no deduction is allowable unless the possibility that the charitable transfer will not become effective is so remote as to be negligible. If an interest passes to or is vested in charity on the date of the gift and the interest would be defeated by the performance of some act or the happening of some event, the occurrence of which appeared to have been highly improbable on the date of the gift, the deduction is allowable. The deduction is not allowed in the case of a transfer in trust conveying a present interest in income if by reason of all the conditions and circumstances surrounding the transfer it appears that the charity may not receive the beneficial enjoyment of the interest. For example, assume that assets placed in trust consist of stock in a corporation the fiscal policies of which are controlled by the donor and his family, that the trustees and remaindermen are likewise members of the donor's family, and that the governing instrument contains no adequate guarantee of the requisite income to the charitable organization. Under such circumstances, no deduction will be allowed. Similarly, if the trustees were not members of the donor's family but had no power to sell or otherwise dispose of closely held stock, or otherwise insure the requisite enjoyment of income to the charitable organization, no deduction would be allowed.

(f) *Exceptions.* (1) This section does not apply to contributions by estates and trusts (see section 642(c)). For disallowance of certain charitable deductions otherwise allowable under section 170, see sections 503(e) and 681(b)(5) (re-

lating to organizations engaged in prohibited transactions). For disallowance of deductions for contributions to or for the use of communist controlled organizations, see section 11(a) of the Internal Security Act of 1950, as amended (50 U.S.C. 790). For denial of deduction for charitable contributions as trade or business expenses and rules with respect to treatment of payments to organizations other than those described in section 170(c), see section 162 and the regulations thereunder.

(2) No deduction shall be allowed under section 170 for amounts paid to an organization:

(i) A substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation, or

(ii) Which participates in or intervenes in any political campaign on behalf of any candidate for public office. For purposes of determining whether an organization is attempting to influence legislation or is engaging in political activities, see section 501(c)(3) and the regulations thereunder. Moreover, no deduction shall be allowed under section 170 for expenditures for lobbying purposes, promotion or defeat of legislation, etc. See also the regulations under section 162.

(3) No deduction for charitable contributions is allowed in computing the taxable income of a common trust fund or of a partnership. See sections 584(d) and 703(a)(2)(D). However, a partner's distributive share of charitable contributions actually paid by a partnership during its taxable year may be allowed as a deduction in the partner's separate return for his taxable year with or within which the taxable year of the partnership ends, to the extent that the aggregate of his share of the partnership contributions and his own contributions does not exceed the limitations in section 170 (b). In the case of a nonresident alien individual, or a citizen of the United States entitled to the benefits of section 931, see sections 873(c), 876, and 931.

[T.D. 6500, 25 FR 11402, Nov. 26, 1960, as amended by T.D. 6605, 27 FR 8094, Aug. 15, 1962; T.D. 6785, 29 FR 18499, Dec. 29, 1964; T.D. 6832, 30 FR 8574, July 7, 1965; T.D. 6900, 31 FR 14633, Nov. 17, 1966; T.D. 7084, 36 FR 266, Jan. 8, 1971; T.D. 7207, 37 FR 20768, Oct. 4, 1972]